

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE: NEW ENGLAND COMPOUNDING)	
PHARMACY, INC., PRODUCTS LIABILITY)	
LITIGATION)	
)	MDL No.: 2419
)	Master Docket No.: 1:13-md-2419-FDS
)	
THIS DOCUMENT RELATES TO:)	
)	
)	
All actions.)	

**NOTICE OF FILING OF PLAINTIFFS STEERING COMMITTEE’S PROPOSAL ON
SAINT THOMAS MOTION FOR RECONSIDERATION**

INTRODUCTION

The Plaintiffs’ Steering Committee now responds to St. Thomas’s motion for reconsideration of the existing case management schedule. After many meet and confers, the parties have narrowed the issues and agreed upon some fundamental steps that must be taken to advance this litigation. The parties have exchanged draft case management orders, ESI protocols, medical releases, deposition protocols, Plaintiff’s Fact Sheets, protective orders, and various plaintiff releases (i.e. work records release, education release, etc.). The parties have not reached complete agreement on many of these items, though the dialogue has been productive.

Cognizant of the Court ordered deadline for filing a response, the PSC hereby submits its proposed revisions to the current case management schedule.

PROCEDURAL HISTORY

On September 26, 2013, Saint Thomas Network, Saint Thomas Hospital West, and Saint Thomas Health (collectively with the Saint Thomas Outpatient Neurosurgical Center, the Howell Allen Clinic, Dr. John Culclasure, and Debra Schamberg, R.N., “Saint Thomas”) filed a Motion for Reconsideration (Dkt. No. 457, the “Saint Thomas Motion”) seeking unidentified

modifications to the Court's Case Management Order Number 7 (Dkt. No. 438, "CMO 7").¹ On October 7, 2013, the Plaintiffs Steering Committee ("PSC") filed a response to the Saint Thomas Motion (Dkt. No. 478, the "PSC Response"). The Court heard argument on the Saint Thomas Motion at its regularly scheduled October 8, 2013 status conference and ordered the parties to meet and confer on the Saint Thomas Motion (Dkt. No. 519).

Thereafter, the PSC and Saint Thomas conducted an extensive meet and confer (*See e.g.*, Dkt. Nos. 525 and 543). Despite the parties holding at least six meet and confer telephonic discussions, exchanging numerous emails, and trading drafts of four different case management orders, they were unable to agree on many substantive issues. At the November status conference, the Court ordered the PSC and Saint Thomas to provide proposals by November 25, 2013 (*See* Dkt. No. 567), and pursuant to that request, the PSC offers the following proposal on the Saint Thomas Motion.

THE PSC'S PROPOSED SCHEDULE

As the Court is already aware from the original PSC Response, the PSC believes that CMO 7 contained a balanced and reasonable schedule for the orderly administration of this MDL. After speaking at length with St. Thomas, the PSC continues to believe that the deadlines set by CMO 7 are balanced and reasonable.

That said, the PSC appreciates that part of St. Thomas's concern with the existing schedule is born of a desire to have a clearer picture of how this litigation would proceed beyond the existing deadlines. St. Thomas was, understandably, eager to establish an ESI and deposition protocol, set deadlines for bellwether selection, and agree upon medical records releases – none

¹ Saint Thomas Outpatient Neurosurgical Center, Howell Allen Clinic, Dr. John Culclasure, and Debra Schamberg, R.N. were not a party to the original motion but filed a separate motion seeking to join the Saint Thomas Motion, which the Court granted. Dkt. Nos. 459 and 461. Thereafter Specialty Surgery Center and Dr. Kenneth Lister also filed a motion to join the Saint Thomas Motion, which the Court also granted. Dkt. Nos. 506 and 507.

of which were addressed in detail in MDL Order 7. The PSC had negotiated several of these matters with the Affiliated Defendants earlier in this litigation, but given the progression of the case (and the lack of a defendant to negotiate with) the PSC had set these efforts aside. The PSC now agrees that, given the progression of this litigation, additional deadlines should now be set.

The attached proposed Case Management Order contains the additional deadlines proposed by the PSC and also contains some previous deadlines already ordered by the Court (i.e. deadlines for filing short form complaints and a master complaint against the Affiliated Defendants).

The new deadlines proposed by the CMO principally revolve around the submission of Plaintiff Profile Forms, which the PSC proposes to be the exact same form as the Personal Injury and Wrongful Death Addendum to the Bankruptcy Proof of Claim form (the “Bankruptcy Addendum”), along with a HIPAA-compliant medical release to be negotiated by the parties. Since each plaintiff in this litigation is already required to submit the Bankruptcy Addendum by January 15, 2014, the PSC proposes that this form be used in this litigation to help guide bellwether selection. Once bellwether plaintiffs are selected, additional discovery of those selected plaintiffs will occur.

The PSC proposes that all plaintiffs with claims pending in this MDL serve the Plaintiff Profile Form no later than January 29, 2013 (or two weeks after claim forms are due to the Bankruptcy Court) on the applicable parties. Following submission of the Plaintiff Profile Form, defendants will have ninety days to obtain medical records (if defendants require additional medical records above what has previously been obtained) and review Plaintiff Profile Forms before the parties are required to select a bellwether pool. Once a case is selected into the

bellwether pool, plaintiffs and defendants will then be required to submit a more comprehensive Fact Sheet and the parties may take additional case-specific discovery, if warranted.

Meanwhile, master discovery over Unaffiliated Defendants², plaintiffs, and non-parties will continue (and discovery over Affiliated Defendants may be ordered during this time) and the parties (including Affiliated Defendants in the event mediation fails) can continue to meet and confer about the form of Plaintiff and Defendant Fact Sheets, deposition protocols, ESI protocols, and bellwether protocols.

The PSC recognizes that other Unaffiliated Defendants have not had an opportunity to comment on the PSC's proposal. The procedural posture of the St. Thomas Motion required the PSC to engage directly with St. Thomas to try to reach resolution of their concerns. The PSC requests that other Unaffiliated Defendants who wish to comment on the PSC's proposed schedule speak with the PSC or file a response (with the Court's permission) promptly so that these scheduling matters can be resolved at the next status conference currently scheduled for December 13, 2013.

The PSC believes this procedure continues the balanced and reasonable approach of CMO 7 and guides this case into its next discovery-oriented phase. The PSC's proposed CMO is attached.

Date: November 25, 2013

Respectfully submitted:

/s/ J. Gerard Stranch, IV
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² For purposes of this Notice, defined terms not otherwise defined herein shall have the same definition as used in CMO 7.

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Plaintiffs' Steering Committee

CERTIFICATE OF SERVICE

I, J. Gerard Stranch, IV, hereby certify that I caused a copy of the foregoing to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

Date: November 25, 2013

/s/J. Gerard Stranch, IV
J. Gerard Stranch, IV